BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.138, 24.301.146 24.301.161, 24.301.172, 24.301.209, 24.301.301, 24.301.401, 24.301.421, 24.301.431, 24.301.441, 24.301.451, 24.301.461, 24.301.481, 24.301.501, 24.301.558, 24.301.711, 24.301.718, and 24.301.801, the adoption of NEW RULES I through IX, and the repeal of ARM 24.301.471, 24.301.601, 24.301.612, 24.301.613, 24.301.614, 24.301.615, 24.301.621, and 24.301.622 pertaining to building codes	)))))))))))))))))))	NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On October 27, 2005 the Department of Labor and Industry published MAR Notice No. 24-301-191 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules relating to building codes, at page 2021 of the 2005 Montana Administrative Register, issue no. 20.

2. On November 18, 2005, the Department held a public hearing on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the November 28, 2005, deadline.

3. The Department has thoroughly considered the comments and testimony received. A summary of the comments received and the Department's responses are as follows:

COMMENT 1: One commenter sent in written comment regarding ARM 24.301.146(19), which addresses snow load requirements for buildings in Montana. The commenter stated that he is concerned that the amendments to the rule will allow snow loads as low as 20 psf which he feels are not adequate for certain areas of Montana that at times see up to 12' of snow fall at one time.

RESPONSE 1: The proposed amendment to the rule does not rescind the 30 psf minimum design roof snow load, it simply allows for possible modification under strict circumstances. The amendment to allow the use of coefficients, other than those in the building code, for modifying ground snow loads is proposed to allow engineering and design practices, possibly not formatted in the building code, to be applied to building design. It is important to note that both amendments require justification by a Montana licensed design professional. For these reasons the Department is amending this rule as proposed.

COMMENT 2: One commenter stated that in the reason for ARM 24.301.161 there is a reference to R-12 insulation, which does not exist. This reference should have been listed as R-11 insulation.

RESPONSE 2: The Department agrees and regrets the error, which does not affect the language of the rule or its applicability.

COMMENT 3: The Department received one oral comment regarding ARM 24.301.172, which addresses the International Mechanical Code. The commenter would like to see the Department adopt the 2006 edition of the Uniform Mechanical Code as it is published by the same entity as the Uniform Plumbing Code already adopted by the Department. This would mean both codebooks would come from the same publisher rather than two separate publishers as it is now.

RESPONSE 3: The Department has not proposed adoption of a new code edition at this time; therefore the Department cannot take action with respect to this comment. The Department will keep the comment in mind, and take it into consideration in the future when considering adoption of the new code editions.

COMMENT 4: One oral comment was received regarding ARM 24.301.301(1)(h)(i), which allows the installation of waterless urinals. The commenter feels that some clarification is needed in regards to the language found in the last sentence of the rule which states that a properly sized drain, vent and water supply line, shall be installed in the event the owner decides or is ordered to replace the non-water supplied urinal with a water supplied urinal. The commenter would like the Department to specify who would have the authority to order the owner to remove the urinal.

RESPONSE 4: The amendments to this rule do not grant any specific person, agency or entity the authority to order the removal of a waterless urinal. In addition, the Department does not have any authority over existing buildings and therefore could not require a waterless urinal to be removed. A representative from the Department of Public Health and Human Services explained that county health inspectors may issue a violation if a owner fails to properly maintain a waterless urinal. The Department is not aware of any other city, county or state agencies that have any authority over improperly maintained waterless urinals.

COMMENT 5: Several comments, both oral and written, were received by the Department in support of the amendments to ARM 24.301.301(1)(h)(i), which allows the installation of waterless urinals. These commenters stated that waterless urinals save water and the commenters' research and experience has shown waterless urinals to be as sanitary and safe as the conventional flush type urinals. One commenter went on to state that waterless urinals have a lower bacterial count than flush type urinals when maintained properly and studies show that the waterless urinal is safe for the piping involved and are safer for drain fields than the deodorant blocks typically used in a flush type urinal.

RESPONSE 5: The Department acknowledges the commenters' view on waterless urinals.

COMMENT 6: With respect to ARM 24.301.301(1)(h)(i) one commenter stated that he supports the amendment allowing waterless urinals however he does not feel that the drain, vent, and water line should be required when installing the urinal.

RESPONSE 6: The Department included the requirement a properly sized drain, vent and water supply line be installed for a waterless urinal in the event that an owner decides to remove the urinal or is ordered to remove it. If an owner were to decide or be ordered to remove a waterless urinal and the plumbing for a flush type urinal were not in place, it would be very costly to the owner to install the piping necessary to install a flush type urinal. Due to the varying opinions on this subject the Department believes it is prudent to require that the plumbing be in place in the event the waterless urinal is removed.

COMMENT 7: The Department received several negative comments regarding the amendments to ARM 24.301.301(1)(h)(i) relating to the installation of waterless urinals. The commenters stated that although the waterless urinal saves water the urinals only work well when maintained properly. Waterless urinals must be washed down on a regular basis and the trap insert, which is filled with a bio-degradable material, must be re-filled, and there is no way to enforce maintenance. The commenters state that there is already a problem in maintaining a flush type urinal and are doubtful that maintenance will be any better on a waterless urinal. The commenters stated that when not maintained properly the waterless urinal becomes an unsanitary health issue and that other states have proven failures on waterless urinal installations.

RESPONSE 7: The Department of Environmental Quality, which supports this amendment, made a presentation to the Department's Building Codes Council to consider allowing waterless urinals to be installed anywhere in Montana without limitations. The council then recommended the Department adopt the proposed rule that would allow waterless urinals to be installed if a properly sized drain, vent, and water line is installed to allow the owner to install a flush urinal without incurring too much expense. The Department of Public Health and Human Services was contacted regarding the health issue and responded that it was not opposed to waterless urinals. Given that there was not significant opposition to waterless urinals, the Department is adopting the rule as proposed.

COMMENT 8: One commenter stated that waterless urinals are not allowed by the Uniform Plumbing Code currently adopted in the State of Montana and also noted that the International Association of Plumbing and Mechanical Officials' technical committee has reviewed this issue many times and every time voted to prohibit their use. For these reasons the commenter is not in favor of allowing the use of waterless urinals.

RESPONSE 8: The Department has reviewed the proposed code amendments to the Uniform Plumbing Codes and is aware the technical committee voted to prohibit the use of waterless urinals. For the reasons given in comment 7 the Department is adopting the rule as proposed.

COMMENT 9: One commenter expressed concern regarding the fluid found in the canister of a waterless urinal and whether or not the fluid is toxic. This commenter also questioned whether a waterless urinal increases the users risk of contracting a disease spread through bodily fluids such as hepatitis.

RESPONSE 9: According to information provided by the Department of Environmental Quality (DEQ) the fluid found in the waterless urinal canister is chloroxylene, which is generally used as a disinfectant. It is stable and safe to use though it has been found to cause dermatitis when overused, as with any cleaning agent. The DEQ went on to state that the fluid is benign from a health standpoint and doesn't appear to have any environmental concerns associated with it. The DEQ also stated that research and experience has shown waterless urinals to be as sanitary and safe as the conventional flush type urinals and that waterless urinals have a lower bacterial count than flush type urinals when maintained properly.

COMMENT 10: Several commenters stated that the addition of the word "licensed" in ARM 24.301.431(7) would ensure that any electrical work covered under the National Electrical Code, performed in association with a permit issued by the Department, would be done by licensed electricians.

RESPONSE 10: Although Montana adopts the National Electrical Code (NEC) generally; it also amends or deletes many NEC provisions by using the state's administrative rules process. Given the fact that Montana's application and adoption of the NEC is therefore in many respects different from the way the NEC is applied or enforced in other states, the Department concludes that allowing only licensed Montana electricians to install electrical equipment in this state is the best way to ensure that those installations comply with all relevant Montana statutes and administrative rules, including but not limited to the NEC. In short, the Department agrees with this comment, primarily because it believes that since Montana laws and regulations relating to electrical installations specifically address public health, safety, and well-being concerns and situations unique to Montana, the best way to ensure that these mandates are understood and complied with is to require Montana licensure of those performing electrical work in this state. For these reasons the Department has amended this rule as proposed.

COMMENT 11: Several commenters stated that the addition of the work "licensed" in ARM 24.301.431(7) covers work that may be addressed in the National Electrical Code but would not be considered electrical work such as digging ditches, pouring concrete, wiring thermostats, and wiring data/telephone equipment. These items are included in the National Electrical Code but do not require a license. The commenters went on to state that Montana Code Annotated specifies that the State

Electrical Board, not the Building Codes Bureau, has the authority to determine when an electrical license is required.

RESPONSE 11: The Department believes that any work covered by the National Electrical Code (NEC) is, by definition, electrical work. Consequently, as explained in Response 10, the Department believes it appropriate to require licensure of those who perform electrical installations in this state. More specifically, these commenters are incorrect in stating that digging ditches or pouring concrete are considered electrical work. In fact, the NEC only covers wiring methods that involve underground electrical installations or those which are covered by or buried beneath concrete. The Department believes that only licensed electricians are competent to understand and comply with regulatory requirements for these types of wiring methods. The Department is unconcerned about the lack of licensure of those who may dig ditches or pour concrete. Additionally, since Montana does not presently enforce provisions of the NEC relating to low voltage wiring methods such as installation of data/telephone wiring or low voltage thermostatic control wiring, the Department concludes the commenters' concerns in this regard are unfounded. Finally, to respond to the commenters' concern regarding the Department's authority to require licensure for work done under the electrical permits it issues, section 50-60-601, MCA, which is entitled "Electrical Installations" and which is enforced by the Building Codes Bureau, states in pertinent part that: "The purpose of this part is ... to establish a procedure for determining where and by whom electrical installations are to be made ..." (emphasis added.) For these reasons, the Department has amended this rule as proposed.

COMMENT 12: One commenter stated that the addition of the word "licensed" in ARM 24.301.431(7) would significantly hinder the process by which most electricians start their career. The commenter stated that many electricians start by working as a laborer or running low voltage wiring for six months and then they are eligible to apply for apprenticeship. If the word "licensed" is allowed to be added to this rule, workers would not be able to get the experience needed to apply for apprenticeship, which would limit the number of workers who can enter the trade.

RESPONSE 12: The Department disagrees with the underlying premise of the commenter, that a potential apprentice must have six months of experience before being eligible to apply for and become indentured as an apprentice. Pursuant to the Department-approved apprenticeship standards, prior experience is not required to apply for an electrical apprenticeship. The Department concludes that the proposed amendment will not limit the number of workers who can enter the trade. However, in order to clarify the application of the rule, the Department has amended the rule to expressly provide that work performed pursuant to a permit must be performed by a licensed electrician or a registered electrical apprentice.

COMMENT 13: Commenters stated that ARM 24.301.441(3) should be amended to require all inspectors to include code references in the correction notice. The commenters stated that many companies use those corrections as a training tool and incorporate them into company newsletters, notices and meetings. The

commenters stated that state inspectors already do this but they are not sure that all city inspectors include the reference in their correction notices.

RESPONSE 13: These commenters are correct in noting that state electrical inspectors include code references in the correction notices they issue. Although this practice is in place as a matter of policy at the state inspector level, there is no statute or administrative rule presently in effect which requires that city, county, or town inspectors also provide code references as part of their respective code enforcement programs. However, the Department believes these commenters make an excellent suggestion and, therefore, the Department will consider including it as part of a future rule proposal, which addresses city, county, or town code enforcement programs. For these reasons, the Department has amended this rule as proposed.

COMMENT 14: Commenters stated that the orange (conditionally approved) tags allowed in ARM 24.301.451(2) are being applied to installations that have violated the rough-in inspection requirement and may cause confusion on whether or not a rough-in inspection was done. The commenters also stated that the orange tag may be confused with a red tag and are concerned that a conditional approval may cause problems with the power supplier when the installation is ready to be energized. The commenters also expressed concern that electrical work that has not been inspected is being covered up and that when dealing with a life safety issue such as this that there should be no such thing as conditionally approved.

RESPONSE 14: The use of the orange tag is intended to influence contractors and homeowners to call for and to provide proper notice for rough-in inspections as required by ARM 24.301.441. The orange tag is easily distinguishable from the red tag in both appearance and verbiage. The orange tag has the words “conditionally approved” which will help to distinguish it from the red tag, which says “rejected”. There should be no confusion as to whether or not a rough-in inspection has been performed as the orange tag is only applied to those installations that have not received rough-in inspections. The Department has not had any complaints citing confusion relative to orange tags from any power supplier nor did any power supplier comment on the proposed rule. Historically the Department has used discretion relative to requiring installations to be uncovered or exposed if a rough-in inspection was not performed. If code violations are detected, dismantlement may be required.

COMMENT 15: Commenters stated that they are concerned that the change to ARM 24.301.718(1)(a) and (b) may require large petroleum facilities and other similar facilities to shut down on an annual basis, and not just during regularly scheduled maintenance shut downs. The commenters would like the rule clarified to specify that processing systems such as pulp, paper, chemical and petroleum manufacturing facilities only need to shut down for an internal inspection during the facility's regularly scheduled maintenance shut down.

RESPONSE 15: The Department understands the impact that shutting down boilers may have on a building/business owner and will continue to utilize 50-74-209(1)(c), MCA, which provides "Upon written application, longer inspection intervals may be authorized by the department." Processing facilities within Montana are currently using this law without any disruption of production in their facilities. The amendments to this rule do not change the meaning or application of 50-74-209(1)(c), MCA, and therefore processing facilities can utilize this option, if they wish to extend the inspection interval for boilers that have been properly maintained and do not have outstanding violations or material deficiencies. The Department is evaluating methods to educate boiler owners/operators on internal inspection requirements and options available to them.

4. The Department has amended ARM 24.301.138, 24.301.146, 24.301.161, 24.301.172, 24.301.209, 24.301.301, 24.301.401, 24.301.421, 24.301.441, 24.301.451, 24.301.461, 24.301.481, 24.301.501, 24.301.558, 24.301.711, 24.301.718 and 24.301.801 exactly as proposed.

5. The Department has amended ARM 24.301.431 with the following changes, stricken matter interlined, new matter underlined:

24.301.431 ELECTRICAL PERMIT (1) through (6) remain as proposed.

(7) The permittee shall be responsible for all work performed under the electrical permit, and shall ensure that all work meets the requirements of the National Electrical Code, as amended by the version of ARM 24.301.411 in effect at the time the permit was issued. No permittee shall allow any other person to do, or cause to be done, any work under an electrical permit issued to the permittee, except the permittee or ~~his licensed~~ the permittee's employees who are licensed as an electrician or registered as an electrical apprentice.

(8) through (11) remain as proposed.

AUTH: 50-60-203, 50-60-603, 50-60-607, MCA
IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, 50-60-605, MCA

6. The Department has adopted NEW RULE I (24.301.602), NEW RULE II (24.301.606), NEW RULE III (24.301.607), NEW RULE IV (24.301.608), NEW RULE V (24.301.609), NEW RULE VI (24.301.610), NEW RULE VII (24.301.611), NEW RULE VIII (24.301.623) and NEW RULE IX (24.301.472) exactly as proposed.

7. The Department has repealed ARM 24.301.471, 24.301.601, 24.301.612, 24.301.613, 24.301.614, 24.301.615, 24.301.621, and 24.301.622 exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006.